Office - Supreme Court, U.S.
FILED
JUL 31 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. [redacted] 181

In the Matter of the Application of
FOUR MAPLE DRIVE REALTY CORP.,
Petitioner-Appellant,

for an order pursuant to Article 78 of the Civil Practice Act,

against

CHARLES ABRAMS, State Rent Administrator,
Respondent-Appellee,

HAROLD KELLY and 74 other tenants similarly situated,
Intervenor-Respondents-Appellees.

MOTION TO DISMISS OR AFFIRM

NATHAN HELLER,
Attorney for Respondent-Appellee,
280 Broadway,
New York 7, New York.

BEATRICE SHAINSWIT,
of Counsel.

INDEX

	PAGE
Statement	1
Argument	3
The Historical Background	3
No Substantial Constitutional Issue is Presented	6
Conclusion	10
Appendix	11

Cases Cited

Asbury Hospital v. Cass County, 326 U. S. 203 (1945)	8
Bain Peanut Co. v. Pinson, 282 U. S. 493 (1931)	9
Bayside Fish Co. v. Gentry, 297 U. S. 422 (1936)	9
Borden's Farm Products Co. v. Ten Eyck, 297 U. S. 251	6
Bowles v. Willingham, 321 U. S. 503 (1944)	2, 4, 7
Carmichael v. Southern Coal & Coke Co., 301 U. S. 495	6, 9
Continental Baking Company v. Woodring, 286 U. S. 352 (1932)	9
East New York Sav. Bank v. Hahn, 293 N. Y. 622, affirmed 326 U. S. 230	6
Marcus Brown Holding Co. v. Feldman, 256 U. S. 170 (1921)	2, 8

PAGE

Metropolitan Casualty Co. v. Brownwell, 294 U. S. 580 9

Rast v. Van Deman and Lewis Co., 240 U. S. 342 .. 9

South Carolina Highway Dept. v. Barnwell Bros., 303 U. S. 177 6

Teeval Co., Inc. v. Stern, 301 N. Y. 346 (1950); certiorari denied, 340 U. S. 876 ..... 2, 4, 7

United States v. Carolene Products Co., 304 U. S. 144 6

CONSTITUTION, STATUTES AND RULES CITED

Constitution of the United States, Fourteenth Amendment 6

Emergency Price Control Act of 1942 (56 Stat. 23) 3

Housing and Rent Acts of 1947, 1948 and 1949 (61 Stat. 193; 62 Stat. 93; 63 Stat. 18) 3

Laws of 1954 of the State of New York, Chapter 141, Section 3 ..... 5, 11

Laws of 1957 of the State of New York, Chapter 755, Section 4(4)(a) and Section 17(2) 6, 12

New York Emergency Housing Rent Control Law, McK. Uncon. L., Section 8581 *et seq.* 3, 11

Rent and Eviction Regulations, Section 33(5) .. 5, 11, 12, 13

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 1076

In the Matter of the Application of
FOUR MAPLE DRIVE REALTY CORP.,

Petitioner-Appellant,

for an order pursuant to Article 78
of the Civil Practice Act,

against

CHARLES ABRAMS, State Rent Administrator,

Respondent-Appellee,

HAROLD KELLY and 74 other tenants similarly situated,

Intervenor-Respondents-Appellees.

MOTION TO DISMISS OR AFFIRM

Appellee, the New York State Rent Administrator, moves, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, to dismiss or affirm on the ground that the questions presented are so insubstantial as not to warrant further argument.

Statement

Petitioner-landlord's attempt to gain review by this Court is premised on what can only be designated as entirely frivolous grounds.

First of all, no question of public interest is involved. Indeed, this appeal does not and cannot affect anyone other than this particular landlord. The sole issue is whether a 1954 New York statute, requiring that certain rent increases be computed in a certain way, and a New York State Rent Commission Regulation adopted in conformance therewith, are constitutional. The statute was repealed in April of this year, and the Regulation was amended accordingly; the present Regulation concededly meets all of landlord's objections, and presents no constitutional problems. Thus, the only question here is the validity of the former statute—a question of no concern to anyone except this landlord, who has kept the instant increase application alive since 1955, and admittedly comes to this Court merely to claim the increases it might have received during the past three years had the now repealed statute always been a nullity.

The case thus has no public significance warranting the burdening of this high Court. In addition, however, any issue of unconstitutionality is of the narrowest type, and concerns a principle long since settled by this Court. The New York Court of Appeals, indeed, judged this appeal to be unworthy of any hearing whatever; it granted a motion to dismiss, on the ground that the constitutional issue raised was not substantial and therefore did not even warrant discussion.

The statutory provision attacked involves the methodology of calculating one of the numerous types of rent increases permitted by the New York State Emergency Housing Rent Control Act. Rent Control itself, as an exercise of the federal war power or state police power, has of course long since been held by this Court to be constitutional. *Bowles* v. *Willingham*, 321 U. S. 503 (1944); *Marcus Brown Holding Co.* v. *Feldman*, 256 U. S. 170 (1921). This particular New York State Rent Act, as first adopted in 1950, was upheld by the highest court of New York, in an exhaustive opinion, in *Teeval Co., Inc.* v.

Stern, 301 N. Y. 346 (1950); certiorari was denied, 340 U. S. 876.

Landlord's challenge is solely to a technical detail of New York rent control—a rule for computing rent increases which, it claims, created an unreasonable classification among landlords. We shall show that any classification that existed was obviously justified. Moreover, the statute in question was so very technical and peculiar to local conditions in New York State as to fall pre-eminently within the special competence of the State Legislature. This case, indeed, presents a most apt illustration of the wisdom of the long-standing proscription on judicial interference with state economic legislation reasonably adapted to a public end. Nothing in the defunct statute here attacked presents any question even remotely of interest to this Court.

Argument

The Historical Background

Due to a continued housing shortage of emergency proportions in New York, the continuation of rent controls by State law has been found to be necessary. Rent Control in New York State is fundamentally modeled on the post-World War II federal pattern, embodied in the Emergency Price Control Act of 1942 (56 Stat. 23) and the succeeding Housing and Rent Acts of 1947, 1948 and 1949 (61 Stat. 193; 62 Stat. 93; 63 Stat. 18). Under these laws the "generally fair and equitable" rents directed by Congress were achieved by "freezing" all rents at the 1943 level.

When New York State took over the administration of controls in 1950 (New York Emergency Housing Rent Control Law, McK. Unconsol. L., § 8581 *et seq.*), all rents continued to be frozen at, in essence, this federal 1943 level. In 1951, however, the State law was amended to authorize

the granting of rent increases where the State Rent Administrator found that a property was not yielding a specified "fair" return [id. at § 8584(1), subd. 4(a)(1)]. A provision of this type had been in effect under federal law for only one year, from 1949 to 1950. *Bowles* v. *Willingham*, 321 U. S. 503 (1944) and *Teeval Co., Inc.* v. *Stern*, 301 N. Y. 346 (1950) (*supra*, p. 2) had, it should be emphasized, upheld the constitutionality of, respectively, the federal and state rent control laws, without any such "fair return" provision at all.

The return guaranteed by the Rent Act is, briefly, 6% of the current assessed valuation (Appendix, p. 11). Since, in New York State as elsewhere, property is frequently assessed at some amount other than true value, the Rent Act also specifies that the assessed valuation is to be adjusted by applying the ratio it bears to full valuation, as determined by the New York State Board of Equalization and Assessment (an agency set up to compute these "equalization rates", for the purpose of achieving fair distribution of various state financial grants keyed to assessed valuation).

In 1954 the Board of Equalization and Assessment made a state-wide revision of equalization rates. Rates were reduced by 50% or more in many counties. This meant that if, say, a house assessed at $10,000 had previously been equalized at 100% of value, it might now be equalized at 50% of value or less—i.e., the Board of Equalization now found that the house was really worth $20,000 or more.

Since the 6% rent increase formula was tied to *equalized* assessed valuation, this substantial downward revision of equalization rates necessarily threatened immediate mass rent increases in many counties. Such a wave of increases, in the midst of the continued housing shortage, might have caused the very inflation, dislocation, and extreme hardship that the rent control program was designed to prevent.

Accordingly, in order to provide time for studying the rate revision and for evolving methods of minimizing its

impact, an additional law was enacted—Section 3 of Chapter 141 of the Laws of 1954 (quoted in Appendix, pp. 11-12)—providing that, for the purposes of the State Rent Act, notwithstanding all other laws, the 1953 equalization rates should be used. The Commission then amended Section 33(5)(a) of its Regulations to incorporate this statement (Appendix, p. 12). It is this Act and Regulation that landlord here challenges as unconstitutional.

In 1955, the Legislature decided to continue use of the 1953 equalization rates for rent control purposes. It therefore left undisturbed both Section 3 of Chapter 141 and the 6% increase provision of the Rent Act. The Commission accordingly left undisturbed the amendment to its Regulation.

This freeze was ended in 1957. Careful study of the problem by the State Rent Administrator and the Joint Legislative Committee on Rents and Rental Conditions had revealed that the impact of the revised equalization rates could be greatly eased by utilizing newly provided structural breakdowns of these rates.

The old rates had been out of line largely in relation to 1- and 2-family houses in certain counties in the State; apartment houses are, in general, assessed at close to full value. Overall equalization rates, however, were made up by averaging both types. Patently, to apply this average overall rate to all structures, in computing rent increases caused by the revision, would have resulted in unjustified windfall increases to many apartment house owners. Now, however, structural ratios were found to be available, stating the precise rate necessary for equalization on every type of building.

This discovery, plus general findings made after three years of study, led the Legislature in 1957 to permit the future use of the revised equalization rates—with the structural breakdowns—in the 6% increase formula. The special 1954 Act, requiring continued use of the old rates,

was therefore repealed [Chap. 755 of Laws of 1957, § 17(2)], and the fair return provision of the Rent Act amended to provide for the use of the new rates (id., sec. 4(4)(a); Appendix, pp. 12-13).

No Substantial Constitutional Issue is Presented

Landlord's challenge is directed solely to the now repealed 1954 statute directing the continued use of the old 1953 equalization rates. Landlord claims that this Act, in effect for three years, violated its right to due process and equal protection of the laws, under the 14th Amendment to the United State Constitution.

The principles by which to test the constitutionality of a statute resting on the police power have been asserted over and over again. A legislative enactment carries with it a strong presumption of constitutionality, i.e., it is presumed to be supported by facts known to the Legislature. *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152; *South Carolina State Highway Dept.* v. *Barnwell Bros.*, 303 U. S. 177, 191; *Carmichael* v. *Southern Coal & Coke Co.*, 301 U. S. 495, 509-510; *East New York Sav. Bank* v. *Hahn*, 293 N. Y. 622, 627-628, affirmed 326 U. S. 230. The courts may not be concerned with questions as to the reasonableness, wisdom, propriety, or desirability of such a statute; nor may they substitute their judgment for that of the Legislature so long as there can be discovered "any state of facts either known or which could reasonably be assumed" to afford support for the legislative decision to act. *United States* v. *Carolene Products Co., supra*, 304 U. S. 144, 154; *East New York Sav. Bank* v. *Hahn, supra*, 326 U. S. 230, 234; *South Carolina Highway Dept.* v. *Barnwell Bros., supra*, 303 U. S. 177, 191; *Borden's Farm Products Co.* v. *Ten Eyck*, 297 U. S. 251, 263.

The question thus posed is whether there existed in 1954 a reasonable basis for legislative findings justifying continued use of the old equalization rates. In other

words, landlord can prevail only by establishing that the legislative choice was without any rational foundation whatever.

The fact is, on the contrary, that the Legislative acted with extreme wisdom. (1) It is long since settled that an emergency rent control statute—whether enacted by a state in the exercise of its police power, or the federal government in the exercise of its war power—need not provide for any "fair return" whatever to the individual landlord, so long as "generally fair and equitable" rents are provided for. Just such laws, as we have noted, with no "fair return" provision whatever, were upheld by this Court—*Bowles* v. *Willingham*, 321 U. S. 503 (1944) (the Emergency Price Control Act of 1942)— and by the New York Court of Appeals—*Teeval Co., Inc.* v. *Stern*, 301 N. Y. 346 (1950), cert. den. 340 U. S. 876 (the 1950 Emergency Housing Rent Control Act).

Thus, the instant law would have been—and was held—constitutional without any fair return provision whatever. Certainly, then, it would have been valid if it had provided for a 6% return on assessed valuation, without any mention of equalization rates at all. Yet landlord complains because, although it received the added protection of equalization rates, the Legislature temporarily prevented it from obtaining the benefit of the latest revision of the equalization rates, while means were being sought to keep that revision from wreaking havoc.

(2) There is no question here of any violation of equal protection of the law, for no classification was created. The statute, after all, treated all landlords alike—each was entitled to a 6% return on the assessed valuation of his property, properly adjusted by applying the 1953 equalization rates. The fact that these rates did not reflect the full under-assessment in certain counties is unfortunate, but had to be viewed by the Legislature in the light of the effect on tenants if the revised rates were used.

In other words, assuming for the sake of argument that there was a classification among landlords made here by the Legislature, it was a wholly reasonable and necessary classification. The alternative proposed by landlord—immediate use, in 1954, of the over-all revised equalization rates—would, in the Legislature's view, have resulted in such a wave of rent increases as to do great damage to the rent control program.

It was the Legislature's task to use the most feasible means of attaining its concededly valid objective. Since landlord's alternative, no matter how attractive logically, could not at that time be implemented without damaging the legislative purpose of preventing excessive rent increases, the Legislature made the proper and valid choice in temporarily continuing the use of the 1953 rates. Its action was plainly constitutional.

That a statute does not violate the equal protection of the laws where there is a basis in reason for the classification hardly needs supporting citations. As this Court said in upholding the 1920 New York Rent Laws [*Marcus Brown Holding Co.* v. *Feldman*, 256 U. S. 170, 198-9 (1921)]:

> "It is said, too, that the laws are discriminatory, in respect of the cities affected and the character of the buildings, the laws not extending to buildings occupied for business purposes, hotel property, or buildings now in course of erection etc. But, as the evil to be met was a very pressing want of shelter in certain crowded centers, the classification was too obviously justified to need explanation * * *"

This is, of course, the general rule. As this Court recently noted in *Asbury Hospital* v. *Cass County*, 326 U. S. 203, 214 (1945):

> "The legislature is free to make classifications in the application of a statute which are relevant to the

legislative purpose. The ultimate test of validity is not whether the classes differ but whether the differences between them are pertinent to the subject with respect to which the classification is made. *Metropolitan Casualty Co.* v. *Brownell,* 294 U. S. 580, 583, and cases cited. * * *

"Statutory discrimination between classes which are in fact different must be presumed to be relevant to a permissible legislative purpose, and will not be deemed to be a denial of equal protection if any state of facts could be conceived which would support it. *Rast* v. *Van Deman and Lewis Co.,* 240 U. S. 342, 357; *Carmichael and Southern Coal Co.,* 301 U. S. 495, 509, and cases cited."

Or, as New York's highest court ruled just this week in upholding the Rent Administrator's decision that housing accommodations may be classified, for decontrol purposes, only by rent level, and that, under these circumstances, hotels are not a separate class (*Matter of Hotel Assoc. of N. Y. C.* v. *State Rent Adm'r,* N. Y. Ct. of App., July 3, 1957, p. 5):

"Clearly, the classification adopted is well suited to the purposes of the Emergency Rent Control Law, and has a substantial and reasonable relation to a legitimate public purpose—the prevention of exactions of unjust rents and profiteering."

See also *Bayside Fish Co.* v. *Gentry,* 297 U. S. 422, 429 (1936); *Continental Baking Company* v. *Woodring,* 286 U. S. 352, 370-371 (1932); *Bain Peanut Co.* v. *Pinson,* 282 U. S. 493, 501 (1931).

Finally, we submit that the entire problem is preeminently one for the State Legislature alone to solve. Since landlord cannot possibly establish that the legislative action was without rational basis, this case falls clearly outside the scope of this Court's interest.

CONCLUSION

The order of the New York Court of Appeals is correct, and does not warrant further review by this Court. Appellant presents no substantial federal question, and its appeal should be dismissed.

Dated: July 29, 1957.

Respectfully submitted,

NATHAN HELLER,
Attorney for Respondent-Appellee,
280 Broadway,
New York 7, New York.

BEATRICE SHAINSWIT,
Of Counsel.

Appendix I

STATUTES AND REGULATIONS INVOLVED

Section 4(4)(a)(1) of the 1953 and 1955 State Rent Acts authorized the Temporary State Housing Rent Commission to grant rent increases where:

> "* * * the rental income from a property yields a net annual return of less than six per centum of the valuation of the property. Such valuation shall be the current assessed valuation established by a city or town, which is in effect at the time of the filing of the application for an adjustment under this sub-paragraph properly adjusted by applying thereto the ratio which such assessed valuation bears to the full valuation as determined by the state board of equalization and assessment." [McK. Unconsol. L., § 8584 (1), subd. 4(a)(1).]

Section 33(5) of the Commission's Rent and Eviction Regulations at that time stated that an increase would be granted where there was a yield of less than 6% "of the valuation of the property, as hereinafter defined"; it then defined valuation in the exact language of the second sentence of the above-quoted statutory section.

Chapter 141 of the Laws of 1954 of the State of New York, implementing a statewide revision of equalization rates, amended a large number of laws affected by the revision of equalization rates. The portion relevant to this appeal was Section 3, which provided:

> "Notwithstanding the provisions of any general, special or local law, for the purposes of subdivision four of section four of chapter two hundred seventy-four of the law of nineteen hundred forty-six, as amended, constituting the emergency housing rent con-

trol law, the ratio which the assessed valuation bears to the full valuation shall be computed by using the equalization rate established by the state board of equalization and assessment for use in placing special franchise assessments on assessment roll completed in nineteen hundred fifty-three."

Chapter 141 became effective on March 17, 1954. On July 1, 1954, the Rent Commission promulgated Amendment No. 26 to its Rent and Eviction Regulations, a portion of which amended Section 33(5)(a) of the Regulations to permit a rent increase, in accordance with Chapter 141(3), where:

"The net rental income from a property yields a net annual return of less than six percent of the valuation of the property, as hereinafter defined. Such valuation shall be the current assessed valuation established by a city or town, which is in effect at the time of the filing of the application for an adjustment under this paragraph, properly adjusted by applying thereto the ratio which such assessed valuation bears to the full valuation as determined by the State Board of Equalization and Assessment for use in placing special franchise assessments on assessment rolls completed in 1953."

Chapter 755 of the Laws of 1957, which generally revised the State Rent Act, incidentally repealed [Sec. 17(2)] Chapter 141, Section 3, of the Laws of 1954, and amended Sec. 4(4)(a) of the Rent Act so that it now reads:

"Provision shall be made pursuant to regulations prescribed by the commission, for individual adjustment of maximum rents where (1) the rental income from a property yields a net annual return of less than six per centum of the valuation of the property. Such

valuation shall be the current assessed valuation established by a city, town or village, which is in effect at the time of the filing of the application for an adjustment under this subparagraph properly adjusted by applying thereto the ratio which such assessed valuation bears to the full valuation as determined by the state board of equalization and assessment *on the basis of assessment rolls of cities, towns, and villages for the year nineteen hundred and fifty-four and certified for such year by such board pursuant to section forty-nine-d of the tax law; provided, however, that where at the time of the filing of the application for an adjustment under this subparagraph such board has computations for the year nineteen hundred fifty-four indicating a different ratio for subclasses of residential property in a city, town or village, the commission shall give due consideration to such different ratio except ratios in excess of one hundred percent, provided, further, that where such board has not determined and certified any ratio pursuant to such section of such law for a city, town or village for such year, the commission shall apply the ratio determined or certified by such board for the most recent year.*" (Italics indicate new material.)

Section 33(5) of the Rent and Eviction Regulations was amended accordingly and now authorizes rent increases where:

"5. Net annual return.

a. The net rental income from a property yields a net annual return of less than six percent of the valuation of the property, as hereinafter defined. Such valuation shall be the current assessed valuation established by a city, town or village, which is in effect at the time of the filing of the application for an adjust-

ment under this paragraph, properly adjusted by applying thereto the ratio which such assessed valuation bears to the full valuation as determined by the State Board of Equalization and Assessment on the basis of assessment rolls of cities, towns and villages for 1954 and certified for such year by such Board pursuant to Section 49-d of the Tax Law; provided, however, that where at the time of the filing of the application for an adjustment under this paragraph such Board has computations for 1954 indicating a different ratio for subclasses of residential property in a city, town or village, the Administrator shall give due consideration to such different ratio except ratios in excess of 100 percent, provided, however, that where such Board has not determined and certified any ratio pursuant to such section of such law for a city, town or village for such year, the Administrator shall apply the ratio determined or certified by such Board for the most recent year."